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Attorneys for Defendants
U.S. BANCORP and
U.S. BANK NATIONAL ASSOCIATION,
erroneously sued as "U.S. BANK, N.A."

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WILLYUM WATERS, FRANK SMITH, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

v.

U.S. BANCORP, U.S. BANK, N.A., and DOES 1
through 125,

Defendants.

Case No. CV 09 2071 JSW

CLASS ACTION

**STIPULATION AND
~~PROPOSED~~ ORDER STAYING
ACTION PENDING
RESOLUTION OF MDL
TRANSFER ISSUE**

Hon. Jeffrey S. White

1 Plaintiffs Willyum Waters and Frank Smith (“Plaintiffs”) and Defendants U.S. Bancorp
2 and U.S. Bank National Association, erroneously sued as “U.S. Bank, NA” (“Defendants”), by
3 and through their respective attorneys, hereby stipulate and agree as follows:

4 WHEREAS, on May 12, 2009, Plaintiffs commenced this putative class action involving
5 the imposition of checking account overdraft fees;

6 WHEREAS, Plaintiffs filed their First Amended Class Action Complaint in this Action on
7 June 23, 2009;

8 WHEREAS, on July 17, 2009, Defendants, who are also defendants in another checking
9 account overdraft fee action pending before this Court, *George T. Burke, et al. v. U.S. Bancorp, et*
10 *al.*, Case No. CV 09 1579 JSW (“*Burke*”), filed an Administrative Motion to Consider Whether
11 Cases Should be Related, pursuant to Civil Local Rule 3-12, with respect to *Burke* and this
12 Action;

13 WHEREAS, on July 28, 2009, this Court issued a Related Case Order reassigning this
14 Action to this Court (*see* Dkt. No. 12);

15 WHEREAS, on June 10, 2009, the Judicial Panel for Multidistrict Litigation (the “Panel”)
16 issued a Transfer Order in *In re Checking Account Overdraft Litigation* (MDL No. 2036) (*see*
17 Exhibit A);

18 WHEREAS, the Panel’s June 10, 2009 Transfer Order transferred to the Southern District
19 of Florida three other class actions involving the imposition of checking account overdraft fees
20 for consolidated or coordinated pretrial proceedings with two actions already pending in that
21 District;

22 WHEREAS, since June 10, 2009, the Panel has transferred additional class actions
23 involving the imposition of checking account overdraft fees to the Southern District of Florida as
24 “tag-along” actions to *In re Checking Account Overdraft Litigation* (MDL No. 2036);

25 WHEREAS, on or about July 16, 2009, Plaintiffs in this Action filed a notice with the
26 Panel identifying this Action and *Burke* as potential “tag-along” actions to *In re Checking*
27 *Account Overdraft Litigation* (MDL No. 2036) (*see* Exhibit B);

1 WHEREAS, on July 23, 2009, the Panel issued a Conditional Transfer Order
 2 conditionally transferring this Action, *Burke*, and a third, unrelated action to the Southern District
 3 of Florida as potential “tag-along” actions to *In re Checking Account Overdraft Litigation* (MDL
 4 No. 2036) (*see* Exhibit C);

5 WHEREAS, any notices of opposition to the Panel’s July 23, 2009 Conditional Transfer
 6 Order are due by August 7, 2009;

7 WHEREAS, the parties to this Action wish to avoid the unnecessary consumption of their
 8 own and the Court’s resources and time while awaiting a decision by the Panel on whether this
 9 Action should be transferred to the Southern District of Florida for consolidated or coordinated
 10 pretrial proceedings as a “tag-along” action to *In Re Checking Account Overdraft Litigation*
 11 (MDL No. 2036);

12 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
 13 Plaintiffs and Defendants, by and through their respective attorneys of record, as follows:

14 1. This Action shall be stayed pending a decision by the Panel on whether this Action
 15 should be treated as a “tag-along” action to *In Re Checking Account Overdraft Litigation* (MDL
 16 No. 2036) and transferred to the Southern District of Florida.

17 2. The foregoing stay shall include the stay of Defendants’ obligation to respond to
 18 Plaintiffs’ First Amended Class Action Complaint.

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3. If the Panel issues an order declining to transfer this Action, then:
- (a) Defendants shall file a Notice of Status of MDL Proceedings with this Court within ten (10) days after the date on which they receive notice of the Panel's order; and
 - (b) Defendants shall answer or otherwise respond to the First Amended Class Action Complaint within twenty (20) days after the date on which they receive notice of the Panel's order.

Dated: July 28, 2009

MORRISON & FOERSTER LLP

By: /s/ Sylvia Rivera
Sylvia Rivera

Attorneys for Defendants
U.S. BANCORP and
U.S. BANK NATIONAL
ASSOCIATION, erroneously sued as
"U.S. BANK, N.A."

Dated: July 28, 2009

MCCUNE WRIGHT, LLP

By: /s/ Richard D. McCune
Richard D. McCune

Attorneys for Plaintiffs
WILLYUM WATERS and FRANK
SMITH

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 31, 2009

By: 

Jeffrey S. White
United States District Judge